Office - Supreme Court, U.S.
FILED
NOV 1 1984
ALEXANDER L. STEVAS,
CLERK

No. 84-544 (3)

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1984

ASSOCIATION OF CALIFORNIA WATER AGENCIES, et al.,
Petitioners,

vs.

UNITED STATES OF AMERICA, et al.,
Respondents.

ENVIRONMENTAL DEFENSE FUND, et al.,
Intervenors.

Petition for Writ of Certiorari to the United States Court of Appeals For the Ninth Circuit

CALIFORNIA FARM BUREAU FEDERATION, CALIFORNIA CATTLEMEN'S ASSOCIATION, CALIFORNIA CHAMBER OF COMMERCE, AND CALIFORNIA WOOL GROWERS ASSOCIATION FOR LEAVE TO FILE BRIEF AMICI CURIAE, [redacted] BRIEF AMICI CURIAE IN SUPPORT OF PETITIONERS

THOMAS F. OLSON
COUNSEL OF RECORD
JENNIFER MELLETT VON NOSLER
1601 Exposition Boulevard
Sacramento, California 95815
Telephone: (916) 924-4035
Attorneys for the Amici Curiae California Farm Bureau Federation, California Cattlemen's Association, California Chamber of Commerce, and California Wool Growers Association

BOWNE OF SAN FRANCISCO, INC. • 190 NINTH ST. • S.F., CA 94103 • (415) 864-2300

23 pp

TABLE OF CONTENTS

Page

Motion of California Farm Bureau Federation, California Cattlemen's Association, California Chamber of Commerce, and California Wool Growers Association for leave to file brief amici curiae 1

Interest of California Farm Bureau Federation, California Cattlemen's Association, California Chamber of Commerce, and California Wool Growers Association 2

Substance of the brief amici curiae 3

Reasons for granting this motion 3

Brief of amici curiae California Farm Bureau Federation, California Cattlemen's Association, California Chamber of Commerce, and California Wool Growers Association 7

Argument 8

I

Lack of permanent administration should have excluded the Eel River from the Federal Wild and Scenic River System 8

II

The Ninth Circuit ignored clear evidence which rebutted the presumption of regularity of official acts 11

III

The Secretary's action failed the Administrative Procedures Act standard of review 14

Conclusion 17

TABLE OF AUTHORITIES CITED

Cases

Page

Alabama Nursing Home Assn. v. Harris, 617 F.2d 388 (1980) 12

Arizona v. California, 376 U.S. 340 (1963) 3

Bowman Transport v. Arkansas-Best Freight Systems, Inc., 419 U.S. 281 (1974) 15, 16

Burlington Truck Lines v. United States, 371 U.S. 156 (1962) 15

Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402 (1970) 11, 12, 13, 14, 15

Citizens to Preserve Wilderness Park, Inc. v. Adams, 543 F.Supp. 4 (D.C. Neb. 1981) 14, 15

County of Del Norte v. U.S., 732 F.2d 1462 (9th Cir. 1984) 11, 13, 14, 15

Hercules, Inc. v. EPA, 598 F.2d 91 (D.C. Cir., 1978) 11, 12

Johnson v. Shaughnessy, 336 U.S. 806 (1949) 12

June Oil and Gas, Inc. v. Andrus, 506 F.Supp. 1204 (D.C. Colo. 1981) 15

Kirkhuff v. Cleland, 516 F.Supp. 351 (D.C. D.C. 1981) .. 15

Mazaleski v. Truesdell, 562 F.2d 701 (D.C. Cir. 1977) 12

Mobil Oil Corp. v. Department of Energy, 610 F.2d 796, *certiorari denied* 446 U.S. 937 15

Movement Against Destruction v. Trainor, 400 F.Supp. 533 (D.C. MD. 1975) 14

Schwingel v. Harris, 631 F.2d 192 (2nd Cir., 1980) 12

Skinner v. U.S., 594 F.2d 824 (1979) 12

Smith v. City of Cookville, 381 F.Supp. 100 (D.C. Tenn. 1974) 14

United States v. Chemical Foundation, Inc., 272 U.S. 1 (1926) 11

TABLE OF AUTHORITIES CITED

Statutes

	Page
5 U.S.C. § 706	3, 15, 16
16 U.S.C.:	
§ 1271	3, 10
§ 1273(a)	8, 13
§ 1278(a)	10
§ 1286(d)	10
California Public Resources Code:	
§ 5093.50	3
§ 5093.54(d)	3, 4, 9, 13, 16
§ 5093.56	10
§ 5093.57	10
§ 5093.58	8, 9
California Stats. 1982 Ch. 1481 § 19	9

Other Authorities

3 K. Davis, Administrative Law Treatise § 17.6 (2nd ed. 1980)	11

No. 84-544

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1984

ASSOCIATION OF CALIFORNIA WATER AGENCIES, et al.,
Petitioners,

VS.

UNITED STATES OF AMERICA, et al.,
Respondents.
ENVIRONMENTAL DEFENSE FUND, et al.,
Intervenors.

Petition for Writ of Certiorari to the United States Court of Appeals For the Ninth Circuit

MOTION OF CALIFORNIA FARM BUREAU FEDERATION, CALIFORNIA CATTLEMEN'S ASSOCIATION, CALIFORNIA CHAMBER OF COMMERCE, AND CALIFORNIA WOOL GROWERS ASSOCIATION FOR LEAVE TO FILE BRIEF AMICI CURIAE

California Farm Bureau Federation, California Cattlemen's Association, California Chamber of Commerce, and the California Wool Growers Association respectfully move this Court for leave to file the accompanying brief amici curiae in support of Petitioners' position in this case.

INTEREST OF CALIFORNIA FARM BUREAU FEDERATION, CALIFORNIA CATTLEMEN'S ASSOCIATION, CALIFORNIA CHAMBER OF COMMERCE, AND CALIFORNIA WOOL GROWERS ASSOCIATION

The California Farm Bureau Federation is a voluntary, nongovernmental, nonprofit California corporation. Its primary purpose is to protect and foster agricultural interests throughout the State of California. Its members consist of 52 county Farm Bureaus with a combined membership at the close of its 1983 membership year of over 100,000 families. Over 85% of all commercial farmers in the State of California are members of the county Farm Bureaus.

The California Cattlemen's Association, an organization of approximately 4,000 beef cattle producers, represents this state's beef industry.

The California Chamber of Commerce is a voluntary, nonprofit, statewide business organization. The Chamber has more than 4900 members, including 160 trade associations from virtually every industry and geographic section in the state, including Northwestern California. Three hundred eighty-nine local Chambers of Commerce are affiliated with the California Chamber of Commerce. It is estimated that approximately 75 percent of the private sector work force in California is represented by the Chamber's membership and local affiliations.

California Wool Growers Association is a cooperative organization representing the sheep producers of California. It has approximately 1,100 members.

These organizations seek this Court's permission to express their views in this case because this Court's disposition of the question regarding the future of the North Coast Rivers will have profound implications for the future

water supply available for California business and agriculture and for the economic future of their members.

SUBSTANCE OF THE BRIEF AMICI CURIAE

The brief amici curiae, herein, discusses the relationship between those provisions of the California Wild and Scenic Rivers Act. Ca. Pub. Res. Code § 5093.50 *et seq.*, which concern the Eel River and the Federal Wild and Scenic Rivers Act, 16 U.S.C. § 1271, *et seq.*; and the applicability of the presumption of regularity of official acts and the standard of review of the Administrative Procedures Act, 5 U.S.C. § 706 to the action of the Secretary of Interior, Cecil Andrugs, in designating five California rivers as part of the National Wild and Scenic River System in 1981.

Since the clear language of Ca. Pub. Res. Code § 5093.54(d) designates the Eel River as a candidate for withdrawal in whole or in part from the State System, it did not meet the permanency criteria of the Federal Act. Therefore, its inclusion in the Federal System effectively rebuts the presumption of regularity of official administrative acts. Inclusion of the Eel River in the Federal System was arbitrary and capricious, a blatant and obvious abuse of discretion, and an expression of bad faith by the Secretary of Interior, justifying re-examination of the entire process of designation of the five California rivers by this Court.

REASONS FOR GRANTING THIS MOTION

Since this Court's decision in *Arizona v. California*, 373 U.S. 565 (1963), California has been limited to 4.4 million acre feet of Colorado River water. *Id.*, at 568. As a temporary measure, California has been able to lease an additional 962,000 acre feet unused by Arizona. However,

when the Central Arizona Project is completed in 1985, this surplus will no longer be available to meet California's shortfall. California Water Atlas, 45 (State of California, 1978). Ultimately, the state is two million acre feet short of meeting its long-term water needs. Petitioner's Appendix at A-51. Approximately one million acre feet of water could be supplied by the Eel River. Petitioner's Appendix at A-70.

California has yet to solve the problem of obtaining the necessary water. Traditionally, the North Coast Rivers have been seen as a possible solution to the problem. In 1972, the California Legislature specifically stated its intent to begin to study the Eel River after 1984 as a source of water to determine whether it should be deleted from the California Wild and Scenic River System. Ca. Pub. Res. Code § 5093.54(d).

Annually California farmers sell more than $13 billion worth of commodities. Almost half of all fruits and vegetables grown in the United States come from California. California agriculture contributes to the U.S. balance of trade in that $3 billion in agricultural commodities are exported annually.

California beef cattle herds total approximately five million head of beef cattle, representing a value of $2.55 billion.

California sheep producers maintain approximately 1,000,000 sheep. California is second only to Texas in value of wool production.

California produces more than 90% of the nation's annual production of almonds, apricots, dates, figs, kiwi, nectarines, olives, pistachios, pomegranates, prunes, and walnuts. It leads the nation in production of alfalfa seed, artichokes, asparagus, avocados, broccoli, brussels sprouts, cantaloupes, carrots, casaba melons, cauliflower, celery, crenshaw melons, cut flowers, eggs, garlic, grapes, honey-

dew melons, jojoba, ladino clover seed, lemons, lettuce, lima beans, fresh market mushrooms, nursery products, onions, oriental vegetables, peaches, pears, persian melons, persimmons, potted plants, rabbits, safflower, spinach, strawberries, and processing tomatoes. California Agricultural Summary (California Department of Food and Agriculture, 1984).

California agriculture and business interests are dependent on the availability of water to produce food and fiber for the rest of this nation and the world. The future projected water shortages will have an adverse impact on their ability to do so.

Many members of the amici organizations own lands adjacent to the streams at issue and have sought flood control protection which will not be possible under the restrictions of the Wild and Scenic Rivers Act.

Wherefore, the California Farm Bureau Federation, California Cattlemen's Association, California Chamber of Commerce, and California Wool Growers Association respectfully move this Court for leave to file the accompanying brief amici curiae.

Respectfully submitted,

THOMAS F. OLSON
JENNIFER MELLETT VON NOSLER
1601 Exposition Boulevard
Sacramento, California 95815
Telephone: (916) 924-4035
Attorneys for the Amici Curiae
California Farm Bureau Federation,
California Cattlemen's Association,
California Chamber of Commerce, and
California Wool Growers Association

By THOMAS F. OLSON

No. 84-544

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1984

ASSOCIATION OF CALIFORNIA WATER AGENCIES, et al.,
Petitioners,
VS.
UNITED STATES OF AMERICA, et al.,
Respondents.
ENVIRONMENTAL DEFENSE FUND, et al.,
Intervenors.

Petition for a Writ of Certiorari to the United States Court of Appeals For the Ninth Circuit

BRIEF AMICI CURIAE OF CALIFORNIA FARM BUREAU FEDERATION, CALIFORNIA CATTLEMEN'S ASSOCIATION, CALIFORNIA CHAMBER OF COMMERCE, AND CALIFORNIA WOOL GROWERS ASSOCIATION

A statement describing California Farm Bureau Federation, California Cattlemen's Association, California Chamber of Commerce, and California Wool Growers Association and their interest herein is set forth in the preceding motion requesting leave to file this brief amici curiae. Likewise, a summary of the following arguments is set forth in the preceding motion under the heading "Substance of the Brief Amici Curiae." The general concern of

the amici organizations in this case is based on their long standing policies for development of water resources, exemplified by the following policy statement adopted in December, 1983, by the House of Delegates of the California Farm Bureau Federation:

> "We are opposed to proposals which would prevent the economic development of a stretch of river which has potential resource value; which would necessitate the taking of scenic easements or fee title to privately owned land by eminent domain; or which would unnecessarily involve federal responsibility for a river which is being adequately managed by a state.
>
> Any land designated for wild rivers should be subject to local zoning ordinances.
>
> We oppose the expansion of the National and State Wild and Scenic Rivers System."

ARGUMENT

I

LACK OF PERMANENT ADMINISTRATION SHOULD HAVE EXCLUDED THE EEL RIVER FROM THE FEDERAL WILD AND SCENIC RIVER SYSTEM

The Federal Wild and Scenic Rivers Act (hereinafter the "Federal Act") requires that rivers in the Federal Wild and Scenic Rivers System (hereinafter the "Federal System") be permanently administered by an agency or political subdivision of the State concerned. 16 U.S.C. § 1273(a).

At the time the instant litigation commenced, California did not have permanent administration of the State's rivers in the California System, but the California Legislature had required the adoption of management plans for the rivers designated under the California Wild and Scenic Rivers Act (hereinafter the "California Act"). Ca. Pub.

Res. Code § 5093.58. The plans were never adopted and, finally, this requirement was repealed in 1982 with the Legislature declaring that the repeal of that provision was to have no effect on this litigation. Ca. Stats. 1982 Ch. 1481 § 19.

The repeal of the management plan requirement did not magically retroactively place the rivers under permanent administration in 1981, at the time of the designation. In addition, unique statutory provisions have kept one of the rivers, the Eel River, from permanent administration, then and now.

The California Legislature has gone to considerable trouble to preserve its options concerning the Eel River. The initial and present version of the law contained the following provisions regarding the Eel River:

> ". . . it is the intent of the Legislature, with respect to the Eel River and its tributaries that after an initial period of 12 years following the effective date of this chapter, the Department of Water Resources shall report to the Legislature as to the need for water supply and flood control projects on the Eel River and its tributaries and the Legislature shall hold public hearings to determine whether *legislation should be enacted to delete all or any segment of the river from the System.*" Ca. Pub. Res. Code § 5093.54(d), (*emphasis is added*).

Thus, the California Legislature clearly provided for possible removal of the Eel River from the California System. And equally clearly, the Secretary disregarded the fact that the Eel was not under permanent administration when he made his designation.

In addition, the California Legislature specifically authorized "geologic, hydrologic, economic or other technical

studies" by the Department of Water Resources in order to determine the feasibility of alternate sites for dams on the Eel River. Ca. Pub. Res. Code § 5093.56. However, dams are forbidden on rivers in the Federal System. 16 U.S.C. §§ 1271 and 1286(d).

Furthermore, the temporary flood control measures California law permits on the Eel are in direct contradiction to the Federal Act prohibition on the construction of any water resources project which would have a direct effect on the free-flowing nature of any river in the Federal System. 16 U.S.C. § 1278(a).

The measures were permitted by the California Legislature when it adopted the following provision for possible flood control on the Eel:

> "Nothing in this chapter shall be construed to prohibit any measures for flood protection, structural or non structural necessary for the protection of lives along the Eel River as described in subdivision (d) of Section 5093.54 except for dams, reservoirs or other water impoundment structures; provided however, that such measures for flood protection may include facilities for temporary flood storage or flood storage basins on the tributaries of the Eel River." Ca. Pub. Res. Code § 5093.57.

By virtue of these statutes the California Legislature has ordered studies specifically addressing the desirability of removal of the Eel River from the California Wild and Scenic River System and has permitted certain flood control measures. Nowhere does the Act state that the designation is permanent; to do so would contradict the plain meaning of the provisions that pertain to the Eel River.

Thus, it is clear that the permanency requirements of the Federal Act and the State Act provisions pertaining to the Eel River are in irreconcilable conflict.

II

THE NINTH CIRCUIT IGNORED CLEAR EVIDENCE WHICH REBUTTED THE PRESUMPTION OF REGULARITY OF OFFICIAL ACTS

Despite this statutory conflict, the Ninth Circuit Court of Appeals based its validation of the Secretary's action on the doctrine of the presumption of regularity of official acts.

"In the absence of clear evidence to the contrary, courts presume that public officers properly discharge their duties . . ." *County of Del Norte v. U.S.*, 732 F.2d 1462, at 1468 (9th Cir. 1984) citing 3 K. Davis, Administrative Law Treatise § 17.6 (2nd ed. 1980) and *United States v. Chemical Foundation, Inc.*, 272 U.S. 1, 14-15 (1926).

The court ignored clear evidence to the contrary and misapplied the doctrine to the circumstances of the Secretary's action. As discussed below, if the pressumption is fully understood and applied, it is rebutted by the Secretary's action.

Cases subsequent to *Chemical Foundation, supra,* expanded on the doctrine as follows:

> "Except in cases where there is no accompanying explanation of the reasons underlying an administrator's decision, see *Citizens to Preserve Overton Park, Inc. v. Volpe,* 401 U.S. 402 at 417-419, a strong presumption of regularity supports the inference that when administrative officials purport to decide weighty issues within their domain they have considered the issues." *Hercules, Inc. v. EPA,* 598 F.2d, 91, 123 (D.C. Cir., 1978).

Lower courts have expressly stated that the presumption is a rebuttable one.

> "A presumption of validity attaches to the actions of administrative agencies . . . while the presumption is rebuttable, the burden of proof rests with the party challenging the agencies' action." *Alabama Nursing Home Assn. v. Harris* (1980) 617 F.2d 388, 393 (citations omitted); *Hercules, supra* 123.

And this court has applied the doctrine as if the presumption were rebuttable. In order to rebut the presumption of validity ". . . there must be clear evidence to the contrary showing bad faith or improper behavior." *Citizens to Preserve Overton Park, supra* at 420, followed in *Hercules, supra* at 123.

The presumption has been rebutted in cases where the record was silent as to an important issue (credibility) *Schwingel v. Harris,* 631 F.2d 192, 196 (2nd Cir., 1980); where the agency violated its own regulations, *Mazaleski v. Treusdell,* 562 F.2d 701, 717 (D.C. Cir. 1977); where the agency was aware of false information in the record and refused to remove it, *Skinner v. U.S.* 594 F.2d 824, 830 (1979); and where an agency refused to consider relevant evidence, *Johnson v. Shaughnessy,* 336 U.S. 806, 812 (1949).

Thus, this court should find that the presumption of regularity has been rebutted by the glaring irregularity of the Eel's inclusion in the Federal System.

This case is analagous to *Schwingel, supra,* and *Johnson, supra,* because the record does not indicate whether the Secretary even recognized that the Eel River was in a separate category from the other four rivers. The only indication in the record of familiarity with the Eel's status

is the grandiose and sweeping statement that the entire body of California law was considered. However, the meaninglessness of this statement is obvious, not only by its breadth but also by the rapidity with which this action moved through the Department of the Interior. *County of Del Norte v. U.S.A.*, 732 F.2d 1462 (9th Cir. 1984), Reply Brief for the Federal Appellants, at 6, 7.

In addition to the lack of support in the record, the presumption should be rebutted because the Secretary's action was characterized by both "bad faith and improper behavior," the criteria enunciated in *Overton Park* as necessary to trigger judicial review of agency action. The Secretary was guilty of bad faith in designating the Eel River "Wild and Scenic" because its actual status under California law which is best described as "protected for twelve years and then subject to review" and the status "under permanent administration" required by 16 U.S.C. § 1273 are logically inconsistent categories which cannot overlap. Ca. Pub. Res. Code § 5093.54(d).

Despite this logical impossibility, the Secretary claimed to base his decision on the entire body of California law and the State's prior conduct. *County of Del Norte, supra,* Reply Brief for the Federal Appellants, at 6, 7.

However, examination of the statute shows that he likewise could not conclude in good faith that the State was permanently committed to preserving the Eel River by virtue of its conduct prior to the expiration of the initial twelve year period. No conclusion about the long term intentions toward the Eel River can be made until after the studies mandated by Ca. Pub. Res. Code § 5093.54(d) are commenced in 1985.

Certainly, disregarding the law should be considered "improper behavior", the other criterion that can rebut the presumption. In fact, as Petitioner's brief points out, the statutory violations go so far beyond "improper conduct" as to abridge the sovereign rights reserved to the people of California under the 10th Amendment to the U.S. Constitution.

The significance of the Secretary's action regarding the Eel River was brought to the attention of the Ninth Circuit Court of Appeals. *County of Del Norte, supra,* Petition for Rehearing of ACWA Appellees. However, the Court ignored "clear evidence to the contrary" as required by this Court in *Overton Park* and upheld the Secretary's action.

III

THE SECRETARY'S ACTION FAILED THE ADMINISTRATIVE PROCEDURES ACT STANDARD OF REVIEW

Even if the presumption of regularity were not rebutted, the Secretary's action violated the Administrative Procedures Act. Although the Ninth Circuit should have found that the presumption of regularity was rebutted by the Secretary's conduct, the effect of the presumption has been abridged in recent years by the development of a body of law holding that the presumption does not shield agency action from review. *Citizens to Preserve Overton Park, supra,* 415; followed *Movement Against Destruction v. Trainor,* 400 F.Supp. 533 (D.C. Md. 1975); *Smith v. City of Cookville,* 381 F.Supp. 100 (D.C. Tenn. 1974); *Citizens to Preserve Wilderness Park, Inc. v. Adams,* 543 F.Supp. 4

(D.C. Neb. 1981); *Kirkhuff v. Cleland*, 516 F.Supp. 351 (D.C. D.C. 1981).

In *Overton Park*, the court gave the Secretary of Transportation the benefit of the presumption and then proceeded to review his action in terms of the Federal Administrative Procedures Act, 5 U.S.C. § 706. *Overton Park, supra*, p. 416. The standard of review is whether the agency action was "arbitrary and capricious." *Id.*; followed *Kirkhuff, supra.*

The Secretary's action in designating the Eel River for inclusion in the Federal System fails the Administrative Procedures Act standard of review enunciated in *Overton Park* and subsequent cases in that it was arbitrary and capricious, it was an abuse of discretion and it was contrary to law. 5 U.S.C. § 706.

This Court has articulated a threefold test for making a finding of arbitrary and capricious agency action in *Bowman Transport* as follows:

> "A reviewing court must 'consider whether the decision was based on (1) a consideration of relevant factors and (2) whether there has been a clear error of judgment . . .' *Citizens to Preserve Overton Park, supra*, at 416, (3) the agency must articulate a 'rational connection between the facts found and the choice made.' *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)." *Bowman Transport v. Arkansas-Best Freight Systems, Inc.*, 419 U.S. 281, 285 (1974) *renumbering added*, followed: *Mobil Oil Corp. v. Department of Energy*, 610 F.2d 796 (1979), *certiorari denied*, 446 U.S. 937. *June Oil and Gas, Inc. v. Andrus*, 506 F.Supp. 1204. (D.C. Colo. 1981).

The Secretary could not possibly have considered the second sentence of Ca. Pub. Res. Code § 5093.54(d) and included any part of the Eel River in his designation. Indeed, the record does not show that he did, except in the context of having considered all of California law. *County of Del Norte, supra,* Reply Brief for the Federal Appellants at 6, 7. Thus, the inevitable conclusion that relevant factors were not considered, satisfies the first element of the test for arbitrary and capricious agency actions. *Bowman, supra.*

Inclusion of the Eel River shows a clear error of judgment when viewed in the context of Ca. Pub. Res. Code § 5093.54(d). The Eel simply does not qualify for inclusion in the Federal System, and its inclusion satisfies the second requisite of the *Bowman, supra,* test of arbitrary and capricious agency actions.

And finally, the record is silent as to the existence of any rational connection between the facts regarding the Eel's status and the choice made. The final criteria for making a finding of arbitrary agency action is supplied by the absence of a "rational connection between the facts found and the choice made." *Bowman, supra.* Thus, the action was "arbitrary and capricious" under the legal definition of that expression, thereby violating the requisites of the Administrative Procedures Act, 5 U.S.C. § 706.

CONCLUSION

The Eel River should not have been included in the Federal System because it was not and is not under permanent administration. The presumption of regularity of official acts should be rebutted by the Secretary's action in designating the Eel River to the Federal System. The presumption does not shield the Secretary from review under the Administrative Procedures Act. The Administrative Procedures Act was violated because the action was arbitrary and capricious under the definition of that term developed by the Courts.

Wherefore, amici curiae, California Farm Bureau Federation, California Cattlemen's Association, California Chamber of Commerce, and California Wool Growers Association respectfully pray that this Court grant the writ of certiorari and reverse the decision below.

Respectfully submitted,

THOMAS F. OLSON
JENNIFER MELLETT VON NOSLER
1601 Exposition Boulevard
Sacramento, California 95815
Telephone: (916) 924-4035
Attorneys for the
Amici Curiae
California Farm Bureau
Federation,
California Cattlemen's
Association,
California Chamber of
Commerce, and
California Wool Growers
Association